

§ 208.72

12 CFR Ch. II (1–1–07 Edition)

(2) only in an agency capacity and not directly or indirectly as principal.

§ 208.72 What activities may a financial subsidiary conduct?

(a) *Authorized activities.* A financial subsidiary of a state member bank may engage in only the following activities:

(1) Any financial activity listed in § 225.86(a), (b), or (c) of the Board's Regulation Y (12 CFR 225.86(a), (b), or (c));

(2) Any activity that the Secretary of the Treasury, in consultation with the Board, has determined to be financial in nature or incidental to a financial activity and permissible for financial subsidiaries pursuant to Section 5136A(b) of the Revised Statutes of the United States (12 U.S.C. 24a(b)); and

(3) Any activity that the state member bank is permitted to engage in directly (subject to the same terms and conditions that govern the conduct of the activity by the state member bank).

(b) *Impermissible activities.* Notwithstanding paragraph (a) of this section, a financial subsidiary may not engage as principal in the following activities:

(1) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability or death (except to the extent permitted under applicable state law and section 302 or 303(c) of the Gramm-Leach-Bliley Act (15 U.S.C. 6712 or 6713(c)));

(2) Providing or issuing annuities the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986 (26 U.S.C. 72);

(3) Real estate development or real estate investment, unless otherwise expressly authorized by applicable state and Federal law; and

(4) Any merchant banking or insurance company investment activity permitted for financial holding companies by section 4(k)(4)(H) or (I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

§ 208.73 What additional provisions are applicable to state member banks with financial subsidiaries?

(a) *Capital deduction required.* A state member bank that controls or holds an interest in a financial subsidiary must comply with the following rules in determining its compliance with applica-

ble regulatory capital standards (including the well capitalized standard of § 208.71(a)(1)):

(1) The bank must not consolidate the assets and liabilities of any financial subsidiary with those of the bank.

(2) For purposes of determining the bank's risk-based capital ratios under Appendix A of this part, the bank must—

(i) Deduct 50 percent of the aggregate amount of its outstanding equity investment (including retained earnings) in all financial subsidiaries from both the bank's Tier 1 capital and Tier 2 capital; and

(ii) Deduct the entire amount of the bank's outstanding equity investment (including retained earnings) in all financial subsidiaries from the bank's risk-weighted assets.

(3) For purposes of determining the bank's leverage capital ratio under Appendix B of this part, the bank must—

(i) Deduct 50 percent of the aggregate amount of its outstanding equity investment (including retained earnings) in all financial subsidiaries from the bank's Tier 1 capital; and

(ii) Deduct the entire amount of the bank's outstanding equity investment (including retained earnings) in all financial subsidiaries from the bank's average total assets.

(4) For purposes of determining the bank's ratio of tangible equity to total assets under § 208.43(b)(5), the bank must deduct the entire amount of the bank's outstanding equity investment (including retained earnings) in all financial subsidiaries from the bank's tangible equity and total assets.

(5) If the deduction from Tier 2 capital required by paragraph (a)(2)(i) of this section exceeds the bank's Tier 2 capital, any excess must be deducted from the bank's Tier 1 capital.

(b) *Financial statement disclosure of capital deduction.* Any published financial statement of a state member bank that controls or holds an interest in a financial subsidiary must, in addition to providing information prepared in accordance with generally accepted accounting principles, separately present financial information for the bank reflecting the capital deduction and adjustments required by paragraph (a) of this section.